Supreme Court, U. S.
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79-1181

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-

LUIS HERNANDEZ,
Petitioner

v.

STATE OF FLORIDA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, THIRD DISTRICT

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IN THE

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OCTOBER TERM, 1979

No. 79-

LUIS HERNANDEZ,
Petitioner

v.

STATE OF FLORIDA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, THIRD DISTRICT

Luis Hernandez respectfully petitions for a writ of certiorari to review the judgment of the District Court of Appeal of Florida, Third District, in *Hernandez, et al* v. *Florida.*[1]

OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District, which is not reported, appears as Appendix ("App.") A hereto. The order of the Supreme Court of Florida denying certiorari (App. B) is not reported. No

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[1] Counsel for James Eaton Staples and Chic Eder, whose appeals were consolidated with petitioner's in the District Court of Appeal of Florida, Third District, has informed undersigned counsel that a separate petition for a writ of certiorari will be filed with this Court on behalf of Messrs. Staples and Eder.

opinion was rendered by the Circuit Court of the Eleventh Judicial Circuit of Florida; the judgment of that court is reprinted as Appendix C hereto.

JURISDICTION

The judgment of the District Court of Appeal of Florida, Third District, was entered on February 27, 1979, affirming petitioner's conviction dated October 6, 1977. On April 16, 1979, the District Court of Appeal denied a timely petition for rehearing, and on November 7, 1979, the Supreme Court of Florida denied a petition for a writ of certiorari. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Does the Fourth Amendment forbid the warrantless search and seizure of opaquely wrapped packages found inside a closed, unoccupied truck by police officers responding to information received from a complainant of unproven reliability?

2. Do the decisions of this Court in *United States* v. *Chadwick*, 433 U.S. 1 (1977), and *Arkansas* v. *Sanders*, 439 U.S. 891, 99 S.Ct. 2586 (1979), have retroactive application to an alleged offense committed prior to their rendition?

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., Amend. XIV, Sec. 1:

> * * * nor shall any State deprive any person of life, liberty, or property, without due process of law * * *.

STATEMENT OF THE CASE

At approximately 9:05 p.m. on October 30, 1976, Officers Joseph Sheppard and Adrian Martin of the Miami, Florida, Police Department received a radio call to investigate activity near the north side of the Fifth Street Bridge over the Miami River. The officers proceeded to that location and, finding nothing suspicious, radioed their dispatcher for more information. The dispatcher directed them to the nearby address of Mr. Herbert Halliwell, who had informed police that several men were unloading large packages from a boat onto a truck. Mr. Halliwell, who was unknown to the officers, pointed out to Officers Sheppard and Martin an area across the river where he had observed the unloading of a boat.

The two officers drove to the location indicated by Mr. Halliwell, a stretch of private property generally used by lobster fishermen to moor and unload their boats. They parked their cruiser at the entrance to a fenced-in lot, blocking exit from the area. The two officers proceeded down a dirt road toward the river. As they approached the water, they came upon a truck parked with its front facing them and its back facing a boat moored in the river. When Officer Sheppard reached the front of the truck, he racked a shell into the chamber of his shotgun. At that point, both officers heard rustling movements in the bushes, but they saw no one until Officer Sheppard reached the rear of the truck and saw a man at the edge of the water, about six yards away. The man (later identified as Chic Eder) entered the river and swam away.

Although he had no search warrant and had neither seen nor smelled any contraband, Officer Sheppard then

opened the rear door of the closed truck. Officer Sheppard later testifed that after opening the rear door, he

> observed the truck approximately three-quarters full with large bales of an unknown substance. At that particular time, that was loaded or packaged in an opaque-type material and also bound by burlap or canvas. [R. 39.[2]]

With the truck door open, Officer Sheppard noticed an odor which smelled to him like hay, but not like marijuana. Nevertheless, he took out a pocketknife and cut one of the bales, revealing what he suspected to be marijuana. Officer Martin then boarded the boat and conducted a search which revealed two weapons and a bale similar to the bales in the truck.

Additional officers were summoned to the area. Eder was pulled from the river and placed under arrest. Petitioner and two other men were arrested by Officer John Speisman, who observed them in the water approximately one block from the location of the boat and the truck.

The State filed a criminal information against petitioner, charging him with Unlawful Possession of Cannabis. Citing a violation of his Fourth and Fourteenth Amendment rights, petitioner moved to suppress the evidence seized from the truck and the boat. The motion was denied by the trial court, after a hearing. App. D. Petitioner was subsequently tried by a jury, convicted, and sentenced to two years' incarceration, a $5,000 fine, and three years' probation.

Petitioner's timely motion for a new trial was denied, and his conviction was affirmed on appeal by the District Court of Appeal, Third District, which found that the trial court had not erred in denying petitioner's motion to suppress the evidence seized without a warrant. App. 3a. On November 7, 1979, the Florida Supreme Court denied certiorari, with one Justice dissenting from the denial. App. 4a.

[2] References are to the Transcript of Record on Appeal as certified to the District Court of Appeal, Third District.

REASONS FOR GRANTING THE WRIT

I. The Lower Courts are in Conflict Concerning the Scope of the Fourth Amendment Principles Enunciated in *United States* v. *Chadwick* and *Arkansas* v. *Sanders*.

In two opinions within the past three years, this Court has explored the constitutionality of warrantless searches of even those containers which have been lawfully seized by police. (The element of legal seizure, we would contend, is absent here.) In *United States* v. *Chadwick*, *supra*, decided on June 21, 1977, this Court held that the Fourth Amendment was violated by federal narcotics agents when they conducted a warrantless search of a 200-lb. footlocker which they had lawfully seized and which they had probable cause to believe contained contraband.[3] The decision rested on expectations of privacy and lack of exigency where the footlocker was under the control of the federal agents at the time of the search:

> No less than one who locks the doors of his home against intruders, one who safeguards his personal possessions in this manner is due the protection of the Fourth Amendment Warrant Clause. There being no exigency, it was unreasonable for the Government to conduct this search without the safeguards a judicial warrant provides. [433 U.S. at 11.]

Two Terms later, this Court undertook to resolve "some apparent misunderstanding as to the application of [*Chadwick*] to warrantless searches of luggage seized from automobiles."[4] *Arkansas* v. *Sanders*, *supra*, 99 S.Ct. at 2588.

[3] Large amounts of marijuana were found in the footlocker. 433 U.S. at 5.

[4] Although the footlocker in *Chadwick* was seized from the trunk of a car, the Government did not contend that an automobile search was involved in that case. *Id.*

In *Sanders*, police had probable cause to believe that a certain green suitcase contained marijuana. After watching the suitcase being loaded into the trunk of a taxi, police officers stopped the taxi, asked the driver to open the trunk, and immediately searched the unlocked suitcase. *Id.* at 2588. The State argued in this Court that the warrantless search was proper under the so-called "automobile exception" to the warrant requirement.[5]

A majority of the members of this Court disagreed, holding that "as a general rule there is no greater need for warrantless searches of luggage taken from automobiles than of luggage taken from other places." 99 S.Ct. at 2593. The majority opinion discussed the two reasons underlying the "automobile exception": the inherent mobility of automobiles and the diminished expectation of privacy deriving from the configuration, use, and regulation of automobiles. The majority recognized that while the suitcase might be as mobile as the automobile in which it rides, "the exigency of mobility must be assessed at the point immediately before the search—after the police have seized the object to be searched and have it securely within their control." *Id.* The opinion noted that exigencies justifying the warrantless search of a suitcase generally would depend on such factors as the probable contents of the luggage (a gun, for example) or the suspect's access to those contents. *Id.* at n.11.

With regard to the expectation of privacy, the Court stressed that the "very purpose of a suitcase is to serve as a repository for personal items" (*id.* at 2593); and it noted that a gun case or a kit of burglars tools would not support such an expectation of privacy. *Id.* at n.13. The Court also acknowledged that:

> There will be difficulties in determining which parcels taken from an automobile require a warrant for

[5] *See, e.g., Chambers* v. *Maroney*, 399 U.S. 42 (1970); *Carroll* v. *United States*, 267 U.S. 132 (1925).

> their search and which do not. Our decision in this case means only that a warrant generally is required before personal luggage can be searched and that the extent to which the Fourth Amendment applies to containers and other parcels depends not at all upon whether they are seized from an automobile. [*Id.* at 2594 n.13.]

There are sharp conflicts among the courts which have decided recent container cases. For example, the Second Circuit has held that cardboard cartons should not have been searched without a warrant, *United States* v. *Dien*, Nos. 79-1036, 79-1072, 79-1075 (2d Cir. Oct. 26, 1979), while the Eighth Circuit has upheld the legality of a warrantless search involving a department store box. *United States* v. *Neumann*, 585 F.2d 355 (8th Cir. 1978).

Both courts focused on the issue of expectation of privacy, with the Second Circuit concluding that:

> By placing the marihuana inside a plain cardboard box, sealing it with tape and placing it inside a van the windows of which had been painted over and in which plywood had been placed behind the drivers' seat, petitioners manifested an expectation that the contents would remain free from public examination. The fact that the agents detected the odor of marihuana emanating from the van did not alter this. [*United States* v. *Dien*, *supra*, slip op. at 5246.]

The Eighth Circuit, on the other hand, found "an insufficient expectation of privacy in an unsecured cardboard box sitting in plain view in the passenger compartment of an automobile." *United States* v. *Neumann*, *supra*, 585 F.2d at 360. If a court seeking guidance in deciding a cardboard box case[6] were tempted to dis-

[6] *See also United States* v. *Gaultney*, 581 F.2d 1137 (1978) (no expectation of privacy in taped-shut Scrabble box); *People* v. *Dalton*, 24 Cal.3d 850, 598 P.2d 467, 157 Cal.Rptr. 497 (1979) (*en banc*) (reasonable expectation of privacy in contents of locked metal boxes).

tinguish these cases on the basis of the relative security of the boxes, this Court's language in *Sanders*, decided after *United States* v. *Neumann*, would be instructive. Comparing a small, unlocked suitcase with the locked 200-pound footlocker in *Chadwick*, the *Sanders* majority concluded that the difference in size was not material, "nor did respondent's failure to lock his suitcase alter its fundamental character * * * *" 99 S.Ct. at 2592 n.9.

The conflicting opinions in cases involving canvas-type containers are similarly divergent. The Tenth Circuit followed *Sanders* in finding that a backpack, like a suitcase, is a repository for transporting personal items and concluding that the warrantless search of a backpack violated the Fourth Amendment. *United States* v. *Meier*, 602 F.2d 253 (1979). Two months later, the Supreme Court of Iowa upheld the warrantless search of a knapsack which, unlike a footlocker or suitcase, did not securely conceal articles from view unless latched. "Unless the strap was tight and the sides of the flap were pulled down, contents of the knapsack became visible by simply pushing the flap aside, as on this occasion." *State* v. *Schrier*, 283 N.W.2d 338, 346 (1979).

In contrast, the Fifth Circuit had held even before this Court's decision in *Sanders* that expectations of privacy in the contents of a white canvas duffle bag brought it within the protection of the *Chadwick* prohibition against warrantless searches of luggage. *United States* v. *Johnson*, 588 F.2d 147 (1979).

Adding to the confusion caused by conflicts among the courts is a measure of misunderstanding regarding the proper application of the *Chadwick/Sanders* principles. The Supreme Court of Minnesota, for example, interpreted this Court's "expectation of privacy" principle as justifying a warrantless search *without probable cause*. *State* v. *Tungland*, —— Minn. ——, 281 N.W.2d 646, 649 (1979). The Minnesota court held that the motion to suppress of a defendant charged with possession of marijuana was properly denied because the defendant, who had left his car unlocked on a private lot without permission, with the keys in the ignition and intoxicating liquor in open view, had no expectation of privacy in the passenger area of his car. Consequently, the court found that a police officer did not violate defendant's Fourth Amendment rights when the officer entered the car and looked inside a grocery bag in the back seat, despite a finding that:

> One cannot justify the intrusion into the car and the search of the grocery bag on the theory that before he entered the car [the officer] had probable cause to believe the bag contained marijuana because it is clear that [he] did not have this probable cause. [*Id.*]

The difficulties encountered by the lower courts in determining which containers may be searched without a warrant were frequent in the 30 months following the *Chadwick* decision. The opinion has been cited at least 250 times, an average of more than 8 cases per month.

Similarly, the *Sanders* case, which was decided only seven months ago, has already been discussed by courts in 28 different cases. The dissenters in *Sanders* predicted that "Still hanging in limbo, and probably soon to be litigated are the briefcase, the wallet, the package, the paper bag, and every other kind of container." *Id.* at 2595. Not every kind of container has yet been litigated, but the list includes briefcases,[7] backpacks,[8] knapsacks,[9] cardboard boxes,[10] metal and leather boxes,[11] tote

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[7] *See United States* v. *Presler*, No. 79-5043 (4th Cir. Nov. 29, 1979); *United States* v. *Gooch*, 603 F.2d 122 (10th Cir. 1979); *United States* v. *Schleis*, 582 F.2d 1166 (8th Cir. 1978) (*en banc*).

[8] *See United States* v. *Meier*, *supra*, 602 F.2d at 253.

[9] *See State* v. *Schrier*, *supra*, 283 N.W.2d at 346.

[10] *See United States* v. *Dien*, *supra*, slip op. at 5242; *United States* v. *Neumann*, *supra*, 585 F.2d at 360.

[11] *See People* v. *Dalton*, *supra*, 24 Cal.3d at 850, 598 P.2d at 467, 157 Cal. Rptr. at 497.

bags,[12] duffle bags,[13] grocery bags,[14] and bales.[15]

This Petition presents an appropriate opportunity for forging the next link in the *Chadwick/Sanders* chain, for several reasons. First, this case involves a type of container which is different from a suitcase. The question of whether enclosing material in a sealed non-luggage container is a sufficient demonstration of privacy interest is an open one. In deciding whether these bales are protected by the Fourth Amendment, this Court would provide sorely needed guidance to the lower courts.

Second, the testimony of the officer who cut open the bale in this case is that he did not know what was inside before using his pocketknife. Thus, the complicating factors of protruding contraband or a tell-tale smell are absent.[16] There is also ample evidence that the truck and its contents were under the control of the police at the time of the search. No exigency existed which would justify the failure to obtain a warrant.

Finally, if this Petition were granted, we would argue that there was no probable cause in this case. If this Court were to decide that no reasonable expectation of privacy existed, it would be presented with the important question—raised in *Tungland* but never clearly decided by this Court—whether probable cause is a necessary predicate to a warrantless search.

II. The Courts are Also in Conflict Regarding the Retroactive Application of *Chadwick* and *Sanders*.

An additional compelling reason for granting this Petition is that the warrantless search and seizure took place in 1976, and the case was pending trial when this

[12] *See People* v. *Minjares*, 24 Cal.3d 410, 591 P.2d 514, 153 Cal. Rptr. 224 (1979).

[13] *See United States* v. *Johnson*, *supra*, 588 F.2d at 147.

[14] *See State* v. *Tungland*, *supra*, —— Minn. at ——, 281 N.W.2d at 649 (1979).

[15] *See Webb* v. *Florida*, 373 So.2d 400 (Fla. Dist. Ct. App. 1979).

[16] *See State* v. *Schrier*, *supra*, 283 N.W.2d 346; *Webb* v. *Florida*, *supra*, 373 So.2d at 402.

Court's decision in *Chadwick* was announced. An important question raised by this case, therefore, is whether *Chadwick* and its progeny should be applied retroactively.

The lower courts are badly split on this question. The Eighth Circuit [17] and the Supreme Court of California [18] have held that *Chadwick* announced no new rule of law, rejecting contentions that the case should only be applied prospectively.

The Second,[19] Fifth,[20] Seventh,[21] and Ninth Circuits,[22] however, have declined to apply *Chadwick* retroactively, citing this Court's decision in *United States* v. *Peltier*, 422 U.S. 531 (1975). Apparently, the Florida courts agree. The courts are obviously in conflict on the question of whether *Chadwick* announced a new constitutional doctrine;[23] they are also confused regarding the weight to be given to this Court's remand of *Schleis* v. *United States*, 433 U.S. 905 (1977), for further consideration in light of *Chadwick*.

On remand, the Eighth Circuit, sitting *en banc*, held in *Schleis* that *Chadwick* did not represent a departure from

[17] *See United States* v. *Schleis*, *supra*, 582 F.2d at 1173-74.

[18] *See People* v. *Minjares*, *supra*, 24 Cal.3d at 421 n.6, 591 P.2d at 519 n.6, 153 Cal.Rptr. at 229 n.6.

[19] *See United States* v. *Reda*, 563 F.2d 510 (2d Cir. 1977), *cert. denied*, 435 U.S. 973 (1978).

[20] *See United States* v. *Montgomery*, 558 F.2d 311 (5th Cir. 1977).

[21] *United States* v. *Berry*, 571 F.2d 2 (7th Cir. 1978), *cert. denied*, 439 U.S. 840 (1979).

[22] *United States* v. *Stewart*, 595 F.2d 500 (9th Cir. 1979).

[23] Yet another wrinkle concerns the application of *Sanders* retroactively. In *United States* v. *Dien*, *supra*, the Second Circuit, which had refused to apply *Chadwick* retroactively, held that "*Sanders* merely gave further clarity to a doctrine that was in force *at least* since *Chadwick*. * * * This is clearly not an appropriate case for us to refuse retroactive application of a Supreme Court decision." Slip op. at 5248 (emphasis added).

this Court's long-standing approach to the Fourth Amendment. 582 F.2d at 1173. The opinion specifically recognized that the Second, Fifth and Seventh Circuits had held that *Chadwick* should only be applied prospectively but noted: "If the Supreme Court had not intended *Chadwick* to be applied retroactively, there would have been no reason for remanding the case to this Court." *Id.* at n.6.

Subsequently, the Second Circuit was asked to reconsider its holding in *Reda* that *Chadwick* is inapplicable to pre-*Chadwick* searches. The panel declined to overrule *Reda*, but it also declined to rely on it, noting that neither party in *Reda* had called the panel's attention to the remand of *Schleis*. The opinion also noted that the "bearing of the Supreme Court's remand of *Schleis* was likewise not discussed in *United States* v. *Montgomery*, 558 F.2d 311 (5th Cir. 1977), on which the *Reda* panel relied." *United States* v. *Ochs*, 595 F.2d 1247, 1255 (2d Cir.), *cert. denied*, 48 U.S.L.W. 3172 (U.S. Nov. 13, 1979).

The confusion and conflict among the lower courts regarding not only the retroactivity but also the scope and meaning of this Court's opinions in *Chadwick* and *Sanders* are serious. The issues involved in this case recur with unusual frequency in both state and federal courts, and only this Court can insure that unequal treatment of defendants does not continue to occur.

CONCLUSION

We respectfully urge the Court, for all of the reasons set forth above, to grant a writ of certiorari and to reverse the decision below.

Respectfully submitted,

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Appendices

APPENDIX A

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING PETITION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 1979

Case Nos. 77-1682
77-2412

LUIS HERNANDEZ, JAMES EATON STAPLES,
and CHIC EDER,
Appellants,

vs.

THE STATE OF FLORIDA,
Appellee.

Opinion filed February 27, 1979.

Appeals from the Circuit Court for Dade County, Ira L. Dubitsky, Judge.

Michael Kennedy and Paul Costeleiro; Jack Attias; Hirschhorn & Freeman and Joel Hirschhorn, for appellants.

Jim Smith, Attorney General and James H. Greason, Assistant Attorney General, for appellee.

Before HAVERFIELD, C.J., and PEARSON and BARKDULL, JJ.

PER CURIAM.

These appeals have been consolidated for appellate disposition because they grow out of the same factual situation. Chic Eder and James Eaton Staples appeal a judgment finding them guilty of possession of over one hun-

dred pounds of marijuana, entered upon their plea of nolo contendere, reserving their right to appeal the trial court's order denying their motions to suppress evidence of the marijuana, which was found in a truck and over which they were alleged to have had knowledge and control. The defendant Luis Hernandez appeals a judgment finding him guilty of the same crime. Hernandez was tried before a jury and found guilty.

Each of the defendants has a point urging error upon the trial court's denial of defendants' motion to suppress. For the determination of this question, it is necessary briefly to present the facts as revealed by the record. These facts will be set out in the light most favorable to the order of the trial judge. See Ponder v. State, 323 So.2d 296 (Fla. 3d DCA 1975); and Rodriguez v. State, 189 So.2d 656 (Fla. 3d DCA 1966).

Two police officers received a radio dispatch that an unidentified caller saw several men unloading bales from a boat at night in the Miami River. When the officers saw nothing in the area, they radioed for more information and were given the location of the caller. They contacted the caller, who gave them no further information other than pointing to the general location of the activity he allegedly saw. The officers proceeded to the private property involved. It was an area where lobsters and fishing boats frequently unload. The officers parked their car so as to block ingress and egress to and from the lot. With firearms drawn, they entered the property, saw a truck and heard a rustling noise in the surrounding bushes. Defendant Eder was seen near a moored boat backing into the water. As the officer approached him, Eder began to swim away. The officer returned to the back of the truck, looked inside through the rear door and saw bales of an unidentified substance enclosed in opaque material. One officer observed what he believed to be marijuana on the loading platform of the truck and thereafter cut open one bale to find a substance he recognized as marijuana.

Another police officer later spotted three heads bobbing in the river, one of whom he identified as Hernandez. Hernandez was not wearing a shirt, but a shirt was found aboard the boat on which the marijuana was seized. The officers seized the marijuana in the truck and on the boat.

We hold that the evidence is sufficient to show a probable cause to search the area and the truck which contained the contraband. We further hold that there was adequate, legally-sufficient evidence to withstand defendant Hernandez's motion for judgment of acquittal in that the evidence viewed in the light most favorable to the State shows a prima facie case. See Everett v. State, 339 So.2d 704 (Fla. 3d DCA 1976).

Defendant Hernandez urges, in addition to his claim that the evidence was insufficient, that he should be granted a new trial because a state requested instruction given by the court tended to place the burden on him of disproving his own guilt. We have examined the instruction to which objection was made and hold that it was properly given. See Selph v. State, 22 Fla. 537 (1886); and U.S. v. Llamas, 280 F.2d 392 (2d Cir. 1960).

Having examined the contentions of each appellant in the light of this record and finding no error, the judgments and sentences are affirmed.

Affirmed.

A True Copy

ATTEST:

LOUIS J. SPALLONE
Clerk District Court of
Appeal, Third District

By: /s/ Evelyn A. Hillman
Deputy Clerk

APPENDIX B

SUPREME COURT OF FLORIDA

Wednesday, November 7, 1979

Case No. 56,664

District Court of Appeal, Third District

77-1682
77-2412

LUIS HERNANDEZ, ET AL.,
Petitioners,

vs.

STATE OF FLORIDA,
Respondent.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Fla. R. App. P. 9.120, and it appearing to the Court that it is without jurisdiction, it is ordered that certorari is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

BOYD, OVERTON, SUNDBERG and ALDERMAN, JJ., Concur

ADKINS, ACTING C.J., Dissents

A True Copy
TEST:
Sid J. White
Clerk Supreme Court.

By: /s/ Tanya Carroll
Deputy Clerk

C
cc: √Hon. Louis J. Spallone, Clerk
Hon. Richard P. Brinker, Clerk
Hon. Ira L. Dubitsky, Judge

Joel Hirschhorn, Esquire
of Hirschhorn & Freeman
James H. Greason, Esquire

A True Copy
ATTEST:
LOUIS J. SPALLONE
Clerk District Court of
Appeal, Third District

By: /s/ Evelyn A. Hillman
Deputy Clerk

APPENDIX C

BENCH DOCKET

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR DADE COUNTY

Case No. 76-9380-A

[Filed Oct. 6, 1977—Richard P. Brinker, Clerk]

STATE OF FLORIDA

vs.

LUIS HERNANDEZ

CHARGE, UNLAWFUL POSSESSION OF CANNABIS

JUDGMENT

It appearing unto this Court that you LUIS HERNANDEZ have been regularly tried and convicted of unlawful possession of cannabis in an amount in excess of one hundred (100) pounds.

IT IS THEREFORE THE JUDGMENT of the law and it is hereby adjudged that you are and stand convicted of the offense as above set forth, and it is hereby certified that the fingerprints on the certificate attached hereto and made a part hereof are the fingerprints of the Defendant in this cause and were placed thereon by the Defendant in my presence in Open Court on the date therein certified.

IT IS FURTHER ORDERED that costs in this cause shall be taxed in accordance with the law.

DONE AND ORDERED in open Court at Miami, Dade County, Florida, this 6th day of October A.D. 1977.

/s/ Ira L. Dubitsky
IRA L. DUBITSKY
Judge

[Recorded Oct. 17, 1977—Richard P. Brinker, Clerk]

STATE OF FLORIDA)
) S.S.
COUNTY OF DADE)

[SEAL]

I HEREBY CERTIFY that this instrument is a true and correct copy as shown by files and records in my office. WITNESS MY HAND and official seal this Nov. 17, 1977.

RICHARD P. BRINKER
Clerk, Circuit Court

By /s/ Gloria [Illegible]
D.C.

APPENDIX D

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

Case No. 76-9380A (Dubitsky)

[Filed Oct. 7, 1977—Richard P. Brinker, Clerk]

STATE OF FLORIDA,
Plaintiff,

vs.

LUIS HERNANDEZ,
Defendant.

ORDER DENYING DEFENDANT, LUIS HERNANDEZ'S, MOTION TO SUPPRESS

THIS CAUSE having come on to be heard before me upon the Motion to Suppress filed herein by the Defendant, LUIS HERNANDEZ, and the Court having taken extensive testimony herein, having received certain exhibits into evidence on the Defendant's Motion to Suppress, having heard argument of counsel and being otherwise fully advised in the premises, it is thereupon

ORDERED and ADJUDGED that for the reasons set forth with more particularity in the record, including the various findings of fact that this Court made on June 1, 1977, Defendant's Motion to Suppress the 5,000 pounds of marijuana seized, without a search warrant, by the City of Miami Police Department on October 30, 1976, be and the same is hereby DENIED; in addition, and for

the reasons also stated in the record and the findings of fact entered by the Court on June 1, 1977, Defendant, LUIS HERNANDEZ'S, Amended Motion to Suppress and ore tenus Motion to Suppress the oral statements, confessions, and/or admissions made by him be and the same are hereby DENIED.

DONE and ORDERED at Miami, Dade County, Florida, this 6th day of October, 1977 nunc pro tunc June 1, 1977.

/s/ [Illegible]
Circuit Court Judge

Copies furnished to:

Joel Hirschhorn, Esq.
State Attorney's Office